

JOHN D. CLINE (CA State Bar No. 237759)
50 California Street, Suite 1500
San Francisco, CA 94111
Telephone: (415) 662-2260 | Facsimile: (415) 662-2263
Email: cline@johndclinelaw.com

KEVIN M. DOWNEY (Admitted Pro Hac Vice)
LANCE A. WADE (Admitted Pro Hac Vice)
AMY MASON SAHARIA (Admitted Pro Hac Vice)
KATHERINE TREFZ (CA State Bar No. 262770)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, NW
Washington, DC 20005
Telephone: (202) 434-5000 | Facsimile: (202) 434-5029
Email: KDowney@wc.com; LWade@wc.com; ASaharia@wc.com; KTrefz@wc.com

Attorneys for Defendant ELIZABETH A. HOLMES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	Case No. CR-18-00258-EJD-SVK
)	
Plaintiff,)	DEFENDANT HOLMES' RESPONSE TO DOW
)	JONES' MOTION TO UNSEAL
v.)	
)	
ELIZABETH HOLMES and)	
RAMESH "SUNNY" BALWANI,)	
)	
Defendants.)	Hon. Edward J. Davila
)	
)	
)	
)	
)	
)	

1 Defendant Elizabeth Holmes respectfully submits this response to Dow Jones' motion to unseal
2 certain records in this case. Doc. 881. To protect Ms. Holmes' fundamental right to a fair trial before an
3 impartial jury, no unsealing should occur during the few days remaining before her jury is selected,
4 sworn, and instructed to avoid media reports about the case. After that point, Ms. Holmes has no
5 objection to the proposed unsealing, except for the limited redactions she has proposed to the Court.

6 ARGUMENT

7 In determining whether to unseal judicial records, the Court must balance the public right of access
8 to such records against any countervailing interests--here, Ms. Holmes' Fifth and Sixth Amendment right
9 to a fair trial before an impartial jury. *See, e.g., Valley Broadcasting Co. v. United States District Court*,
10 798 F.2d 1289, 1294 (9th Cir. 1986); *In re Granick*, 388 F. Supp. 3d 1107, 1115 (N.D. Cal. 2019).

11 Waiting to unseal until after the jury is selected, sworn, and instructed to avoid media reports will
12 protect Ms. Holmes' right to a fair trial at very little cost to the public's right of access. Immediate
13 unsealing would expose potential jurors to a spate of media reports about the newly disclosed materials.
14 That media exposure would prolong and complicate jury selection and risk seating jurors influenced by
15 the reports. Withholding any unsealing until after the jury has been selected, sworn, and admonished to
16 avoid media about the case will greatly reduce those dangers. *See, e.g., Sacramento Bee v. United States*
17 *District Court*, 656 F.2d 477, 482 (9th Cir. 1981) (district court excluded media from hearings at which
18 inadmissible evidence was discussed; court of appeals cites as a "logical and workable alternative"
19 delaying disclosure "until the material withheld from the jury might be printed without prejudice to any
20 defendant and without inconveniencing the jury").

21 On the other side of the scale, withholding unsealing for a few days will have minimal effect on
22 the public's right of access. Under Ms. Holmes' proposed approach, the public will have a full opportunity
23 to review the sealed materials (subject to very limited redactions) beginning in early September, just a few
24 days later than it would if the materials were unsealed immediately. Protecting Ms. Holmes' right to a fair
25 trial before an impartial jury far outweighs that minimal burden on public access.

26 Once Ms. Holmes' jury has been selected, sworn, and instructed to avoid media reports about the
27 case, only the limited redactions counsel have proposed to the Court are necessary to protect her fair trial
28

1 rights. Those redactions involve the tiny fraction of material most likely to produce media reports of a
2 kind even conscientious jurors would have difficulty avoiding.

3 **CONCLUSION**

4 For the foregoing reasons, no unsealing should occur before Ms. Holmes' jury is selected, sworn,
5 and instructed to avoid media reports about the case. After that point, Ms. Holmes has no objection to the
6 proposed unsealing, except for the limited redactions she has proposed to the Court.

7
8
9 DATED: August 20, 2021

10
11 /s/ John D. Cline
12 JOHN D. CLINE
13 KEVIN DOWNEY
14 LANCE WADE
15 AMY MASON SAHARIA
16 KATHERINE TREFZ
17 Attorneys for Elizabeth Holmes
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to 18 U.S.C. § 1746, I hereby certify that copies of this Response were served via ECF on the following attorneys on the same day it was filed with the Court.

Jeffrey B. Coopersmith
Stephen A. Cazares
Amy Walsh
ORRICK, HERRINGTON & SUTCLIFFE LLP
jcoopersmith@orrick.com
scazares@orrick.com
awalsh@orrick.com

Attorneys for Ramesh "Sunny" Balwani

Jeffrey Benjamin Schenk
John Curtis Bostic
Robert S. Leach
Kelly I. Volkar
UNITED STATES ATTORNEY'S OFFICE
NORTHERN DISTRICT OF CALIFORNIA
jeffrey.b.schenk@usdoj.gov
john.bostic@usdoj.gov
robert.leach@usdoj.gov
kelly.volkar@usdoj.gov

Attorneys for United States

Steven D. Zansberg
LAW OFFICE OF STEVEN D. ZANSBERG, LLC
steve@zansberglaw.com
Attorneys for Dow Jones & Company, Inc.

/s/ John D. Cline
JOHN D. CLINE
KEVIN DOWNEY
LANCE WADE
AMY MASON SAHARIA
KATHERINE TREFZ
Attorneys for Elizabeth Holmes